



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA

(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)

(916) 445-4982

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July 11, 1984

No. 84/68

TO COUNTY ASSESSORS:

W. BRUCE SHAFER, ET AL. V.
CALIFORNIA STATE BOARD OF EQUALIZATION
SAN FRANCISCO SUPERIOR COURT 812459

Since a large number of the counties of the state were plaintiffs in the subject lawsuit, many of you are already aware of the court's holding in the case. Nevertheless, we have had inquiries concerning the decision particularly as regards the Board's intention to appeal and appropriate action to be taken by the assessors during the appeal.

Briefly stated, the Board has directed the Attorney General's Office to appeal those portions of the decision which held the treatment afforded "builders inventory" and "fixtures" to be invalid. It is our understanding that the counties intend to appeal the portion of the judgment holding the supplemental roll concept valid as an acceleration of tax collection rather than the imposition of new ad valorem taxes in violation of Article XIII A, Section 3 or 4 of the California Constitution.

The Attorney General's Office has advised us that a declaratory judgment without any mandate or injunctive enforcement has no conclusive effect until any appellate review is concluded. Additionally, there is the possibility that the assessment or escape assessment of "builders inventory" or "fixtures" at this time could be held violative of California Constitution Article III, Section 3.5 which provides that an administrative agency has no power to refuse to enforce a statute on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional.

Finally, it should be noted that the judgment in this case specifically provides that:

"6. Paragraphs 2 (builders inventory) and 3 (fixtures) above shall not authorize the assessments or collection of any taxes until such time as this judgment shall become final after appeal or expiration of time for appeal or further order of an appellate court."
(Parenthesis added.)

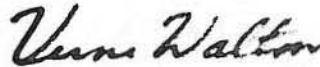
TO COUNTY ASSESSORS

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In view of the above and Revenue and Taxation Code Section 538, the section authorizing this lawsuit, it appears that the assessors should continue to follow all of the code sections applicable to the supplemental roll until an appellate judgment is obtained. Should the appeals process ratify the Superior Court decision, Section 538 provides a procedure and time frame for changing the assessment roll to reflect the final judgment.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

VW:sk